

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JESSE COGILL,)	8:09CV209
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
CARRIE CROPP, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Notice of Appeal. (Filing No. [86](#).) In his Notice of Appeal, Plaintiff seeks to appeal the court's January 18, 2011, Memorandum and Order. (*Id.*) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter.¹ Plaintiff's Notice of Appeal is therefore construed as a Motion for Interlocutory Appeal. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such "controlling question of law" is implicated. The court's January 18, 2011, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of

¹ Although the court has dismissed some, but not all, claims from this action, a judgment under [Federal Rule of Civil Procedure 54\(b\)](#) is not appropriate here. The dismissed claims and the pending claims have a common factual background and allowing one appeal to go forward while this case progresses is not in the interest of judicial economy.

a final judgment in this matter. For these reasons, Plaintiff's Notice of Appeal, construed as a Motion for Interlocutory Appeal, is denied.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Notice of Appeal (filing no. [86](#)), construed as a Motion for Interlocutory Appeal, is denied. The Clerk of the court is directed not to process the Notice of Appeal.

2. Plaintiff's Motion for Leave to Proceed in Forma Pauperis on appeal (filing no. [87](#)) is denied as moot.

3. In accordance with the court's previous Memorandum and Order, Plaintiff has until March 18, 2011, to complete service of process on the remaining defendant.

DATED this 18th day of February, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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